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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

VITAL FARMS, INC., Plaintiff, v. HANDSOME BROOK FARM, LLC, and HANDSOME BROOK FARM GROUP 2 LLC, Defendants.	Case No. 3:16-cv-1421 (GTS/DEP) **COMPLAINT** DEMAND FOR JURY TRIAL

Plaintiff VITAL FARMS, INC. ("Vital Farms") hereby alleges as follows against Defendants HANDSOME BROOK FARM, LLC, and HANDSOME BROOK FARM GROUP 2 LLC (collectively, "Handsome Brook"):

1. This is an action for false or misleading advertising and promotion under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), and deceptive acts and practices under N.Y. Gen. Bus. Law § 349.

2. Consumers understand that pasture-raised hens are provided with particular levels of care, and actively seek pasture-raised eggs in order to ensure that the hens who produce the eggs that they purchase receive that level of care.

3. Vital Farms has been producing and distributing pasture-raised egg products since 2008.

4. Handsome Brook falsely labels, advertises, and promotes its eggs as exclusively "pasture-raised" when in fact its products include eggs from hens who were not pasture-raised. By falsely labeling, advertising, and promoting its products as exclusively pasture-raised, Handsome Brook has been able to deceptively and unfairly capture market share and sales, causing losses to Vital Farms.

5. Handsome Brook's actions have caused harm to the general public and Handsome Brook's competition, particularly its primary competitor, Vital Farms. By this action, Vital Farms seeks to (1) enjoin Handsome Brook from continuing to make false and misleading promotional claims that its eggs are "pasture-raised"; (2) require Handsome Brook to disseminate corrective advertising and disclosures; and (3) recover damages for the substantial harm caused by Handsome Brook's false and misleading labeling, advertising, and promotion of its eggs as pasture-raised.

PARTIES

6. Plaintiff Vital Farms, Inc., is a corporation organized and existing under the laws of the State of Delaware and maintains its principal place of business in Austin, Travis County, Texas.

7. Defendant Handsome Brook Farm, LLC is a corporation organized and existing under the laws of the State of New York and maintains its principal place of business in Franklin, Delaware County, New York.

8. Defendant Handsome Brook Farm Group 2 LLC is a corporation organized and existing under the laws of the State of New York and maintains its principal place of business in Franklin, Delaware County, New York.

9. Handsome Brook's primary place of business lies within this judicial district, and Handsome Brook conducts business and distributes products within the Northern District of New York and throughout the United States. According to Handsome Brook's website, the company is "delighted to now sell our eggs to customers throughout the United States!"[1] Handsome Brook eggs are available to purchase at stores within this judicial district.

JURISDICTION AND VENUE

10. This action arises under 15 U.S.C. § 1125(a) and the statutory laws of the State of New York. This Court has subject-matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question), 15 U.S.C. § 1121 (Lanham Act), 28 U.S.C. § 1367 (supplemental jurisdiction), and 28 U.S.C. § 1332 (diversity).

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[1] http://handsomebrookfarm.com/5-2/about-handsome-brook-farm/ (last visited Nov. 9, 2016).

11. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and 1400, because a substantial portion of the events or omissions giving rise to the claims occurred in this District.

FACTUAL ALLEGATIONS

I. As Public Awareness Has Grown, a Market Has Arisen for Pasture-Raised Eggs.

12. As public awareness has grown regarding the inhumane treatment of animals raised for food, and especially the conditions in which many caged egg-laying hens are kept, consumer demand for humanely produced eggs has grown.

13. For example, in 2008, California voters approved Proposition 2, a statewide ballot proposition, which required that egg-laying hens be confined only in ways that allowed hens to lie down, stand up, fully extend their limbs, and turn around freely. In November 2016, Massachusetts voters overwhelmingly approved a similar ballot initiative.

14. A 2015 Consumer Reports survey found that it is important to consumers that food not be produced via standard factory-farm (agro-industrial) methods. For example, 82% of consumers said it was "important" or "very important" to reduce antibiotic use in food production; 84% said the same about improving living conditions for animals.[2]

15. The highest humane standard for commercially produced eggs is "pasture-raised." Pasture-raised eggs have been called "one of the fastest-growing categories of eggs

[2] *See* https://goo.gl/kC16HY (last visited July 8, 2016).

in America today."[3]

16. Pasture-raised eggs are different from conventionally produced and cage-free eggs in many important aspects. While there are no federal guidelines defining "pasture raised," Handsome Brook has stated on its website and, based on information and belief, represented to its customers that its "pasture-raised eggs" were produced by hens provided with 108 square feet of pasture per hen, using practices that meet or exceed, for example, "Whole Foods Market standards, Certified Humane Organic Standards, [and] USDA Organic standards," and that its hens spend a large portion of their days outdoors on pasture.

17. The Certified Humane® standards for pasture-raised egg laying systems, adopted by Humane Animal Farm Care, Inc. (a non-profit, third-party standards-setting organization) and throughout the egg industry, require, among other things, that hens have access to minimum of 108 square feet of pasture space per hen; that the pasture consist mainly of living vegetation and be designed to encourage the birds to use the pasture area; that the pasture be managed to prevent or minimize degraded, muddy, or worn areas and the buildup of parasites, bacteria, and viruses that may cause hen disease; that hens be outdoors year-round for at least six hours per day; and that hens be confined without access to pasture for no more than 14 consecutive days and only during emergencies.

18. The Certified Humane® standards for pasture-raised egg laying systems also require growers to provide barn housing that keeps birds dry and protects them from wind and predators. The barns must have exit areas at least every 50 feet along one side of

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[3] Strom, S., "Putting the Chicken before the Egg," *The New York Times* (Nov. 23, 2015), *available at* http://www.nytimes.com/2015/11/24/business/improving-the-eggs-before-they-are-hatched.html?_r=0 (last visited Nov. 2, 2016).

the house (large enough to allow the passage of more than one hen at a time), include hen perches, and conform with other housing requirements, such as a thermally comfortable environment that prevents heat- or cold-stress.

19. Other third-party certification programs likewise have adopted the minimum industry standard of 108 square feet of pasture per hen year round. For example, the American Humane Certified™ program requires that each hen be provided with 108 square feet of pasture per bird, be provided with substantial cover of living vegetation, and be provided with housing with at least two openings to pasture areas large enough to allow passage of more than one hen at a time.

20. Commercial buyers of pasture-raised eggs understand that eggs sold as pasture-raised eggs comply with, at a minimum, the industry standard of 108 square feet of pasture per hen, and they rely on the representations that pasture-raised-egg producers make regarding their production practices, including practices required for third-party pasture-raised certification labels.

21. Because pasture-raised eggs—i.e., eggs laid by hens provided with the industry standard of at least 108 square feet per hen of rotated pasture at all times of the year—are challenging and expensive to produce, pasture-raised egg farms do not compete with conventional, large-scale, agro-industrial egg companies whose eggs are not pasture-raised, and there are relatively few producers of pasture-raised eggs.

22. Given the higher production costs and difficulty in achieving economies of scale, pasture-raised eggs routinely sell for at least a premium of $1.00 to $3.00 per dozen compared to conventional eggs.

23. Given high costs of production and logistical concerns, most pasture-raised

egg suppliers are able to market their eggs only in particular regions of the country.

24. As a result, while many small-scale farmers distribute pasture-raised eggs locally, there are only two truly nationwide distributors of eggs that are (or, in the case of Handsome Brook, purport to be) pasture-raised. Those two distributors are Plaintiff Vital Farms and Defendant Handsome Brook.

25. Vital Farms and Handsome Brook compete directly with one another, nationwide. Only Vital Farms and Handsome Brook have the capacity to fulfill large orders from national buyers for eggs that are marketed as pasture-raised.

II. Handsome Brook Entered the "Pasture-Raised" Egg Market from a Single Location, Then Grew at a Rate Unknown Among Truly Pasture-Raised-Egg Farmers.

26. According to its own extensive marketing materials, Handsome Brook began its pasture-raised egg operations from a single location in New York's Hudson Valley, which has served, and may continue to serve, as a bed-and-breakfast.

27. Handsome Brook started selling eggs in 2009. Since then, and especially from 2013 through today, Handsome Brook grew its operations exponentially.

28. On information and belief, within only a few years, Handsome Brook grew its egg production and distribution operations from a single flock to hundreds of thousands of hens within its supply chain. This rate of growth is staggering, and unknown among egg distributors who engage in humane, organic, or other quality-control practices beyond basic agro-industrial animal husbandry.

29. According to Handsome Brook, it achieved this astounding growth through "the blessing of putting together a group of Amish farms, who are deeply committed to

sustainable practices and support and follow our very strict Pasture Raised standards."[4]

30. In reality, Handsome Brook's relationships with the small farmers in its supply chain are far more complicated. In order to fuel its rapid growth, Handsome Brook made presentations touting large returns on small investments to farmers—many with little formal education and little or no experience pasture-raising chickens.

31. Indeed, Handsome Brook sought and contracted farmers primarily in the Northeastern United States, including New York and Pennsylvania, areas in which harsh winter weather conditions make year-round pasturing of hens extraordinarily expensive, if not virtually impossible. Nevertheless, Handsome Brook represented to its contract farmers that year-round (as opposed to seasonal) pasturing was realistic and viable.

32. Handsome Brook presented farmers with contracts, which included cash-flow statements that were premised upon prices per dozen eggs that did not distinguish among eggs, such as discounts for eggs of varying sizes, thus providing farmers with unrealistic expectations of egg prices they would receive. These contracts allowed or encouraged farmers to make an investment that was insufficient to build barn housing that met the pasture-raising standards that Handsome Brook claimed to meet or exceed.[5] As a result, farmers within Handsome Brook's network constructed facilities that provided inadequate useable space and/or insufficient protection for adverse weather conditions.

33. Handsome Brook's production representations were unreasonable or

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[4] http://handsomebrookfarm.com/5-2/about-handsome-brook-farm/ (last visited Nov. 6, 2016).

[5] This lawsuit does not challenge Handsome Brook's contracts with farmer-suppliers, only the effect of those business practices upon competition in the nationwide market for pasture-raised eggs.

unworkable. Seeking eggs that were cheaper than truly pasture-raised eggs, Handsome Brook paid the farmers too little, leaving them without the means to sustain operations in a manner that complied with the standards for pasture-raised eggs that Handsome Brook claimed to meet or exceed. Furthermore, Handsome Brook failed to provide ongoing guidance, assistance, and inspection of the struggling farms in its supply network.

34. As a result of Handsome Brook's failure to provide sufficient guidance on chicken care or pasture-raised standards, many farmers who constructed chicken barns and/or purchased flocks in order to sell eggs to Handsome Brook ended up raising hens in conditions that do not comport with Handsome Brook's promotional claims that its eggs were "pasture-raised" according to standards enunciated on its website and elsewhere. Nevertheless, and despite knowing the conditions in which the hens were actually raised, Handsome Brook labeled and sold such eggs as "pasture-raised."

35. As a result of Handsome Brook's failure to provide sufficient guidance on chicken care or pasture-raised standards, many farmers who constructed chicken barns and/or purchased flocks in order to sell eggs to Handsome Brook ended up raising hens in conditions that did not meet the pasture-raised standards that Handsome Brook claimed to meet; nevertheless, and despite knowing the conditions in which the hens were actually raised did not comport with Handsome Brook's promotional statements, Handsome Brook continued to market, promote, label, and sell such eggs as "pasture-raised."

36. Because the captive supply chain of contract egg producers that Handsome Brook created was insufficient to fuel its rapid growth, Handsome Brook also bought eggs in the spot market to fulfill demand for its purportedly pasture-raised eggs. Handsome Brook made these egg purchases at times without regard for whether those eggs purported

to be or actually were produced by pasture-raised hens, and knowingly purchased eggs it knew were not produced by pasture-raised hens. Nevertheless, and despite knowing the eggs were not (and could not be) from pasture-raised hens, Handsome Brook marketed, labeled, and sold all of its eggs as "pasture-raised."

III. Handsome Brook Has Aggressively Marketed Its Eggs as Exclusively "Pasture-Raised" and Thereby Acquired a Large Share of the Market for Pasture-Raised Eggs.

37. While growing its supply base, Handsome Brook fueled demand for its products through a marketing operation that promised to "redefin[e] how America buys eggs."[6]

38. In a media blitz that included interviews, profiles, and other marketing materials, Handsome Brook and its founders, Brian and Betsy Babcock, have touted themselves as providing "eggs that reflect the highest standards of quality, fair trade practices, and commitment to animal welfare."[7]

39. Handsome Brook has relentlessly positioned itself as the leading provider of pasture-raised eggs, with its founders making regular media appearances in sources from *The New York Times* to *Bloomberg News*.[8]

40. In conjunction with their marketing push, Handsome Brook's founders have

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[6] http://handsomebrookfarm.com (last visited Nov. 6, 2016).

[7] *E.g.*, http://www.prnewswire.com/news-releases/betsy-babcock-founder-of-handsome-brook-farm-named-2-most-innovative-woman-in-food-and-drink-in-2016-300328996.html (last visited Nov. 6, 2016).

[8] *E.g.*, http://www.bloomberg.com/news/audio/2016-07-29/betsy-babcock-on-the-changing-american-egg-industry (last visited Nov. 6, 2016); "This Is What a Genuine Free-Range Farm Looks Like," *available at* http://on.inc.com/29u5zF2 (last visited July 5, 2016) ("The company says that, unlike farmers who claim to raise organic or free-range eggs and then keep their chickens in warehouses, Handsome Brook lets its hens run loose on actual farms.").

continually reinforced their representations about the "pasture-raised" life for the hens whose eggs they sold, for example:

> Q. So what does it mean that your hens are "pasture-raised?"
>
> A. They live in barns in which they have about 2 square feet of space each and two giant doors that give them free access to 12 acres of outside pasture.

"Want a Better Egg? So Does Betsy Babcock," *available at* http://bit.ly/29w0RUz (last visited July 5, 2016) (Betsy Babcock interview).

> Pasture-raised is the highest quality in terms of ethical treatment of hens. These hens have access to 108 square feet per hen. They go outside. They eat bugs. They dust-bathe. They get to be chickens. . . . While it's true that these eggs are a bit more expensive, there are some pasture-raised varieties, such as Handsome Brook Farm Pasture-raised Eggs, that are more reasonably priced than others."

Babcock, Betsy, "A Guide to What Eggs You Should ACTUALLY Buy," *available at* http://bit.ly/29hQFgk (last visited July 5, 2016).

> Betsy Babcock, founder of organic egg producer Handsome Brook Farm in New York state, said she is pleased to finally see the proposed rules. . . . Her company requires that egg producers selling under its brand give hens nearly 109 square feet of outdoor space each.

Gee, Kelsey, "Organic Farming Rules Overhauled," *available at* http://on.wsj.com/215Z62v (last visited July 5, 2016).

41. Handsome Brook's website—which was altered in August 2016 after Handsome Brook became aware of a separate lawsuit challenging its "pasture-raised" label[9]—promotes "standards" including:

[9] On August 19, 2016, the Organic Consumers Association, a non-profit 501(c)(3) organization dedicated to promoting consumer interests, filed an action in the District of Columbia Superior Court alleging that Handsome Brook violated the D.C. Consumer Protection Procedures Act by uniformly labeling its products "pasture-raised" when in fact

- "continuing education to our farmers";
- "lush pastures . . . managed to insure excellent vegetation cover";
- "[h]ens . . . visited multiple times a day, and handled gently and carefully";
- "often . . . farmers singing to [the hens]!"[10]

42. Indeed, until very recently,[11] Handsome Brook's website characterized its "pasture-raised" eggs as being produced from hens raised and housed according to the following practices (among other claims)[12]:

- "Handsome Brook Farm provides lush pasture of more than 108 square feet per hen!";
- "Handsome Brook Farm standards meet or exceed Whole Foods Market standards, Certified Humane Organic Standards, USDA Organic standards, and we have received a 4-Egg Rating from Cornucopia Institute. Most importantly, we regularly receive 3rd party inspections from outside entities to ensure that standards are met"[13];
- "Our hens spend a large portion of their days outdoors on pasture (weather permitting, of course)"; and
- "We provide at least 55 square feet of pasture at a time per hen which, when rotated, is more than 108 feet per hen."

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a significant portion of the eggs are not from hens that consumers would consider pasture-raised.

[10] http://handsomebrookfarm.com/standards/ (last visited Nov. 6, 2016).

[11] At some point within the months preceding the filing of this Complaint, Handsome Brook removed some of these claims from its website. Handsome Brook continues to label its products "pasture-raised" and has done nothing to correct the falsehoods upon which its reputation was established.

[12] *See* http://www.handsomebrookfarm.com (screenshot acquired March 30, 2016).

[13] Like the American Humane Association, the organization behind the "Certified Humane" seal, Humane Animal Farm Care, Inc., also requires that pasture-raised hens have a minimum of 108 square feet of pasture per hen. *See* http://certifiedhumane.org/wp-content/uploads/2015/11/Std14.Layers.5A.pdf (last visited July 18, 2016).

43. Even today, Handsome Brook's website asserts, "We are strongly committed to the highest standards of quality pasture-raised eggs, the ethical and humane treatment of our hens, the well being of our family farms, and fair trade practices."[14]

44. Since it began marketing and selling its eggs, Handsome Brook has labeled all of its eggs as pasture-raised on its packaging and represented that all of its eggs were pasture-raised in its marketing and promotional materials.

45. Since at least early 2016, Handsome Brook has also supported its "pasture-raised" claims with a "certification" on its label from an entity called the American Humane Association ("AHA"). This "certification" is a paid, private arrangement between Handsome Brook and AHA, and is designed to give the impression that Handsome Brook's eggs comply with AHA's pasture-raised standards.

46. In publicly filed documents, Handsome Brook has stated that its AHA certification "informs consumers that [Handsome Brook's] eggs are 'pasture-raised,' which is an important selling point for consumers seeking ethically[]sourced eggs." Likewise, the "American Humane Certified" seal features prominently on Handsome Brook's promotional website. Handsome Brook therefore knows that representing its products as "pasture-raised" is a material component to gaining market share.

47. Additionally, when Handsome Brook has purchased eggs in the open market for resale, it has done so without regard for whether the sellers' eggs comply with Handsome Brook's self-professed pasture-raised-egg standards, with AHA's standards, or with any other third-party certification program for pasture-raised eggs.

48. Nevertheless, Handsome Brook has marketed, promoted, and labeled its

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[14] http://www.handsomebrookfarm.com (last visited July 31, 2016).

eggs as "pasture-raised" and "American Humane Certified."

49. The Cornucopia Institute, a 501(c)(3) non-profit organization dedicated to research and investigations on agricultural and food issues, at one point gave Handsome Brook a "five-egg" rating (later downgraded to four eggs) before declaring that Handsome Brook's rating was "SUSPENDED PENDING FURTHER INVESTIGATION." Nevertheless, long after losing its "five-egg" rating, Handsome Brook continued to place the "five-egg" rating on its products and represent that the products had earned that rating.

IV. Handsome Brook's False Representations Have Usurped Sales from Its Primary Competitor, Vital Farms.

50. Plaintiff Vital Farms is a nationwide producer of pasture-raised eggs. Vital Farms markets both organic and conventional product lines (which vary by the type of feed the hens consume), and all of its pasture-raised eggs are from hens raised according to the requirements of the Certified Humane® pasture-raised egg standards, developed by Humane Farm Animal Care ("HFAC"), a rigorous source-to-sales certification program.

51. Vital Farms started its first farm in 2008 in Austin, Texas, with fewer than 100 birds. Vital Farms subsequently became the first company successfully to scale the pasture-raised farming model into a farming operation that could operate nationwide.

52. Vital Farms partners with more than 100 family farms throughout the Southern and Southwestern United States, where warmer weather conditions make year-round pasturing possible. Vital Farms employs its own agents to visit farms throughout its network and ensure compliance with Certified Humane standards for pasture-raised hens, including a minimum of 108 square feet year-round outdoor space per bird, on rotated pastures, and adequate and secure nighttime housing.

53. Vital Farms' eggs are certified as pasture-raised by HFAC.

54. Handsome Brook once participated in the HFAC certification program but subsequently withdrew. Instead, as discussed above, Handsome Brook now places on its products the "American Humane Certified" label.

55. The price for Vital Farms' eggs reflects the high cost of producing eggs from pasture-raised hens.

56. As the only two companies distributing pasture-raised eggs (or, in Handsome Brook's case, eggs that purport to be pasture-raised) nationwide, Vital Farms and Handsome Brook directly compete with each other, including for contracts and shelf space in major grocery chains, health-food markets, and big-box warehouse stores.

57. By selling as "pasture-raised" eggs that do not comply with the pasture-raised standards Handsome Brook claims to meet, Handsome Brook can produce these eggs at a far lower cost than its competitors who comply with those standards, and thus undercut them in the market for pasture-raised eggs.

58. By falsely representing to its buyers that its eggs are exclusively pasture-raised while enjoying far lower production costs as a result of its non-compliance with pasture-raised egg practices, Handsome Brook has been able to capture sales of pasture-raised eggs to large grocery chains and other large buyers who seek to sell pasture-raised eggs to consumers and has increased its own sales at the expense of its competitors who actually sell pasture-raised eggs, including Vital Farms.

59. Handsome Brook's actions—falsely representing its eggs as exclusively pasture-raised to its buyers—have directly injured Vital Farms. Through its misrepresentations and ability to sell its falsely advertised pasture-raised eggs at an artificially lower price, Handsome Brook has taken sales, shelf space, contracts, and market

share from Vital Farms, which, unlike Handsome Brook, accurately promotes its eggs as pasture-raised.

60. For example, by falsely representing its eggs as exclusively pasture-raised, Handsome Brook has captured from Vital Farms an ongoing commercial relationship for the sale of pasture-raised eggs with a major big box retailer as well as current and future sales to large, national grocery chains.

61. But for Handsome Brook's deceptive and misleading labeling, advertising, and promotion of its eggs as pasture-raised, Vital Farms would have maintained its prior levels of pasture-raised egg sales to these buyers and increased its sales and profits as demand for pasture-raised eggs by retailers and their customers has grown.

62. By conservative estimates, Handsome Brook, through its deceptive and unfair trade practices, has cost Vital Farms more than ten million dollars in lost profit.

FIRST CLAIM FOR RELIEF

FALSE OR MISLEADING ADVERTISING UNDER 15 U.S.C. § 1125(a)

63. Vital Farms incorporates by reference the foregoing paragraphs as if fully set forth herein.

64. Section 43(a) of the Lanham Act provides:

> Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which—
>
> A. is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person, or
>
> B. in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities,

> shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act.

41 U.S.C. § 1125(a)(1).

65. Handsome Brook has made and distributed in interstate commerce and in this District advertising that contains false and misleading statements of fact regarding its products. These advertisements contain actual misrepresentations and/or misleading statements about whether its egg products are pasture-raised, and/or fail to disclose the true nature of its farming operations and the origins of its eggs.

66. Specifically, the statement that Handsome Brook's eggs are "pasture-raised" is a misrepresentation and/or misleading statement, and Handsome Brook uniformly fails to disclose that a substantial portion of its eggs are ***not*** pasture-raised, according to either industry standards or the standards Handsome Brook expressly purports to meet.

67. Compounding the misrepresentation, in some instances, the statement that Handsome Brook's eggs are "organic" is a misrepresentation and/or misleading statement, and Handsome Brook has failed to disclose that it procured eggs from a producer (or producers) without valid organic certification.

68. Handsome Brook's statements actually deceive, or have a tendency to deceive, a substantial segment of its customers and potential customers. This deception is material, in that it concerns the inherent nature, quality, characteristics, and origin of Handsome Brook's products and is likely to influence the purchasing decisions of its customers and of their customers—the consumers.

69. Handsome Brook's false and misleading advertising statements and omissions injure both its customers (and their customers, the consumers) and Plaintiff Vital

Farms.

70. Handsome Brook's false and misleading advertising statements and omissions violate Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

71. Handsome Brook has caused, and will continue to cause, immediate and irreparable injury to Vital Farms, including injury to Vital Farms' business, reputation, and good will, for which there is no adequate remedy at law. Vital Farms is therefore entitled to an injunction under 15 U.S.C. § 1116 restraining Handsome Brook, its agents, employees, and representatives, and all persons acting in concert with Handsome Brook, from engaging in future acts of false advertising, and ordering removal of all of Handsome Brook's false advertisements.

72. Pursuant to 15 U.S.C. § 1117, Vital Farms is further entitled to recover from Handsome Brook the damages sustained by Vital Farms as a result of Handsome Brook's acts in violation of 15 U.S.C. § 1125(a). As of the filing of this complaint, Vital Farms is unable to ascertain the full extent of the damages it has sustained by reason of Handsome Brook's conduct but estimates the damages to be in excess of ten million dollars.

73. Pursuant to 15 U.S.C. § 1117, Vital Farms is further entitled to recover from Handsome Brook the gains, profits, and advantages that Handsome Brook has obtained as a result of its actions in violation of 15 U.S.C. § 1125(a). As of the filing of this complaint, Vital Farms is unable to ascertain the full extent of the gains, profits, and advantages Handsome Brook has obtained by reason of its actions.

74. Pursuant to 15 U.S.C. § 1117, Vital Farms is further entitled to recover the costs of this action. Moreover, Vital Farms is informed and believes, and on that basis alleges, that Handsome Brook's conduct was undertaken willfully and with the intention

of causing confusion, mistake, or deception, making this an exceptional case entitling Vital Farms to recover additional damages and reasonable attorneys' fees.

SECOND CLAIM FOR RELIEF

DECEPTIVE TRADE PRACTICES UNDER NY GBL § 349

75. Vital Farms incorporates by reference the foregoing paragraphs as if fully set forth herein.

76. New York State General Business Law § 349 provides:

(a) Deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state are hereby declared unlawful.

(b) Whenever the attorney general shall believe from evidence satisfactory to him that any person, firm, corporation or association or agent or employee thereof has engaged in or is about to engage in any of the acts or practices stated to be unlawful he may bring an action in the name and on behalf of the people of the state of New York to enjoin such unlawful acts or practices and to obtain restitution of any moneys or property obtained directly or indirectly by any such unlawful acts or practices. In such action preliminary relief may be granted under article sixty-three of the civil practice law and rules.

[. . . .]

(g) This section shall apply to all deceptive acts or practices declared to be unlawful, whether or not subject to any other law of this state, and shall not supersede, amend or repeal any other law of this state under which the attorney general is authorized to take any action or conduct any inquiry.

(h) In addition to the right of action granted to the attorney general pursuant to this section, any person who has been injured by reason of any violation of this section may bring an action in his own name to enjoin such unlawful act or practice, an action to recover his actual damages or fifty dollars, whichever is greater, or both such actions. The court may, in its discretion, increase the award of damages to an amount not to exceed three times the actual damages up to one thousand dollars, if the court finds the defendant willfully or knowingly violated this section. The court may award reasonable attorney's fees to a prevailing plaintiff.

[. . . .]

N.Y. Gen. Bus. Law § 349 (as amended by New York Laws 2014, ch. 55, Sec. HH-6, effective Mar. 31, 2014).

77. Handsome Brook's practice of falsely representing its eggs as "pasture-raised" is consumer-oriented conduct.

78. Handsome Brook's practice of falsely representing its eggs as "pasture-raised" is misleading in a material respect, insofar as the eggs marketed and sold this way have not been produced exclusively from pasture-raised hens.

79. Although Vital Farms is not a consumer, it has nonetheless been injured by Handsome Brook's consumer-oriented conduct, which through its deception has caused harm to the public at large. *See* N.Y. Gen. Bus. Law § 349(h).

80. Vital Farms is not at fault for failing to discover the conduct earlier than it did, as Handsome Brook's business practices are not shared with the public.

81. Handsome Brook's consumer-oriented deception, in addition to harming the general public, has injured Vital Farms by usurping business that otherwise would have belonged to Handsome Brook.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Vital Farms requests judgment providing such relief as follows:

(a) an order declaring Handsome Brook's conduct to be unlawful;

(b) a finding that, through the acts described in this Complaint, Handsome Brook has engaged in false advertising and false comparative advertising in violation of 15 U.S.C. § 1125(a);

(c) a finding that Handsome Brook's actions were willful;

(d) a finding that Handsome Brook has been unjustly enriched as a result of its false advertising and false comparative advertising tactics;

(e) an order pursuant to 15 U.S.C. § 1116(a) and N.Y. Gen. Bus. Law § 349 enjoining Handsome Brook, its agents, servants, employees, officers, and all persons in active concern and participation with Handsome Brook, from misleading the public using false labeling, advertising, and marketing on its egg products, including representations suggesting that its eggs are pasture-raised and/or organic when in fact they are not;

(f) an order pursuant to 15 U.S.C. § 1116(a) and N.Y. Gen. Bus. Law § 349 requiring Handsome Brook to engage in effective, comprehensive corrective advertising, including advertising that informs consumers of the actual conditions under which its hens are kept, and the origin of the eggs it represents as "pasture-raised" and/or "organic";

(g) an order pursuant to 15 U.S.C. § 1116(a) and N.Y. Gen. Bus. Law § 349 requiring Handsome Brook to destroy all product packaging and other materials, and to remove all on-line content, making false and misleading representations about exclusively "pasture-raised" and/or "organic" eggs;

(h) a declaration that this is an "exceptional case" due to the willful nature of Handsome Brook's deceptive conduct;

(i) an order requiring Handsome Brook to account to Vital Farms for all gains, profits, savings, and advantages obtained by Handsome Brook as a result of its false advertising and unfair competition and to disgorge to Vital Farms restitution in the amount of such gains, profits, savings, and advantages;

(j) an order requiring Handsome Brook to pay:

- costs and reasonable attorneys' fees pursuant to 15 U.S.C. § 1117 and applicable state law;
- Handsome Brook's profits and cost savings from the sale of its egg products resulting from its false advertising and other unlawful practices;
- punitive damages in accordance with proof and in an amount consistent with applicable precedent; and
- costs and disbursements, including reasonable attorneys' fees pursuant to the applicable statutes and pre- or post-judgment interest at the maximum rate allowable by law; and

(k) an award to Vital Farms of such other and further relief as this Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiff Vital Farms hereby demands a trial by jury.

DATED: November 30, 2016

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